

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

EMANUEL LEWIS BOONE,

Plaintiff,

v.

TAPIA, *et al.*,

Defendants.

Case No. 1:20-cv-01281-AWI-BAM (PC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS REGARDING
DISMISSAL OF CERTAIN CLAIMS AND
DEFENDANTS

(ECF No. 13)

Plaintiff Emanuel Lewis Boone (“Plaintiff”) is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983.

On November 12, 2020, the assigned Magistrate Judge issued findings and recommendations recommending that this action proceed on Plaintiff’s first amended complaint, filed November 6, 2020, (ECF No. 10), on a cognizable claim for excessive force in violation of the Eighth Amendment against Defendants Tapia and Felix, a cognizable claim for failure to protect against Defendants Arroyo and Jimenez, and a cognizable Due Process claim against Defendants Tapia, Arroyo, and Jimenez. (ECF No. 13.) The Magistrate Judge further recommended that all other claims and defendants be dismissed from this action based on Plaintiff’s failure to state claims upon which relief may be granted. (*Id.*) The findings and recommendations were served on Plaintiff and contained notice that any objections were to be filed within fourteen (14) days after service. (*Id.* at 8.) No objections have been filed, and the deadline to do so has expired.

1 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this Court has conducted a
2 *de novo* review of this case. Having carefully reviewed the entire file, the Court finds the
3 findings and recommendations to be supported by the record and by proper analysis.

4 Accordingly, IT IS HEREBY ORDERED as follows:

- 5 1. The findings and recommendations issued on November 12, 2020, (ECF No. 13), are
6 adopted in full;
- 7 2. This action shall proceed on Plaintiff's first amended complaint, filed November 6,
8 2020, (ECF No. 10), for claims of: (1) excessive force in violation of the Eighth
9 Amendment against Defendants Tapia and Felix; (2) failure to protect in violation of
10 the Eighth Amendment against Defendants Arroyo and Jimenez; and (3) violation of
11 due process against Defendants Tapia, Arroyo, and Jimenez;
- 12 3. All other claims and all other defendants are dismissed from this action for failure to
13 state a claim upon which relief may be granted; and
- 14 4. This action is referred back to the Magistrate Judge for proceedings consistent with
15 this order.

16 IT IS SO ORDERED.

17 Dated: February 2, 2021

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19 SENIOR DISTRICT JUDGE